

JUS CONNATUM AND THE DECLARATION OF THE RIGHTS OF MAN

The famous lines in the first part of Goethe's Faust:

Vom Rechte, das mit uns geboren ist,
Von dem ist leider nie die Frage,

in which Mephistopheles sums up his vitriolic invectives against the study of jurisprudence in general and of positive law in particular, have always been interpreted as a reference to the so-called natural law. Since the entire passage in which these lines occur is missing in the *Urfaust* but appears first in the Fragment of 1790, it might be inferred that the lines in question originated during the time of the French Revolution when declamations about human rights and natural law were in vogue. We must remember, however, that discussions of the nature, the origin and the merits of the *jus naturale* antedate both the American and the French Revolution and that Goethe, as a student of law, doubtless was familiar with them. It is, therefore, not improbable that the unusual phrase "mit uns geboren" by which Goethe characterizes the natural law as opposed to statute or positive law and which, as we shall see later, appears in the adjective form "mitgeboren" in the poet's early writings, was either coined by him or adopted from current legal terminology. In either case, the very use of the term discloses the poet as a champion of the cause which set the later revolutionary events into motion, and as fully conscious of the significance of the idea of natural law as one of the greatest moving powers of modern history.

It is a fact not infrequently overlooked, that the conception of the *lex naturae* which plays so important a role in the political, social and ethical development of modern times, is a product of Stoicism and, to a certain extent, of Epicureanism, the two philosophies of the senile decline of antiquity which mark the birth of individualism. A manifestation of reason, the great general law which pervades the universe and constitutes the final cause of all existence, the natural law, according to the stoic view, is identical with the ethical law both as

to its origin and its nature. This implies not only that this law which is eternal and independent of human statutes constitutes an absolute moral canon for all men but also that, owing to its divine origin, it has obligatory force because it is a part of human nature and as such is capable of apprehension and recognition by human reason which itself had emanated from the universal divine reason.

Never before in the history of Greek thought had the supremacy of reason and its immanent harmony with nature been emphasized as it was in the philosophy of stoicism. Nor do we find a similar glorification of reason and its immanent harmony with nature except during the period of enlightenment in the eighteenth century.

The influence which the stoic doctrine had upon the development of political ideals seems quite obvious. From the postulated rationality of the universe in which every thinking being participates, naturally follows the assumption of a community of those beings. In fact, the stoics claim that there exists an impulse in all men to form a community, for since all men are subject to reason, they possess but one right and law, and in obedience to this law they work for the interest of all. No man can live for himself without living for others, hence it is a direct command of nature that men establish a community. The latter, therefore, develops from the *lex naturae* according to the stoic view, not vice versa.

Moreover, if the human community has for its sole basis the equality of reason in which each individual shares, there is no cause of limiting the community to a single people or nation, for all peoples are members of one body, since nature has formed all of them from the same material and for the fulfillment of the same purpose. Or, as Epiktetus has it: all men are brothers for all pray in the same manner to the same father. It is the idea of cosmopolitanism which for the first time finds philosophical expression in the stoic doctrine, an idea to which again Epiktetus gives concise utterance in the sentence: "*Patriam meam esse mundum sciam et praesides Deos.*"

That there is in these political conceptions and especially in the idea of a World-State or a universal league comprising all nations a decided Utopian element there can be no ques-

tion. The ideal state which really hovered before the mind of the stoics has best been described by Ed. Zeller in his history of Greek philosophy: "a state without marriage, family, temples, courts, schools, and money, a state, that meets with no antagonism on the part of other states because all national limits have been overcome by the brotherhood of all men."

The similarity of this ideal of state with the political dreams of modern communists need not be emphasized. But although the words liberty, equality, brotherhood of man, cosmopolitanism and rule of reason were the slogan among the stoics, little or nothing was done by them to reform contemporary political and social conditions. Not until the American revolution and the subsequent political upheaval in France was the attempt made to translate the stoic ideals into reality. What the stoics were not able to realize themselves, however, they projected into the past by a clever combination of their doctrines with the popular legends of a golden age. According to their teachings it was during this primitive ideal period of humanity that the *lex naturae* ruled supreme. Positive law owes its origin to the subsequent corruption of social conditions. The *jus naturale*, however, retains its original absolute force, even then, and whenever it comes into conflict with the positive law the latter ceases to be obligatory.

It is generally known that the stoic view of the state and the *lex naturae* together with the political theories of other philosophic systems were reproduced later by Cicero, and through his writings, and through the Roman jurists of the early empire, transmitted to the Middle Ages. However, before we follow the later history of the political ideas of stoicism, a word concerning the political theories of Epicureanism which also undergo a revival in the course of time will be in place.

The atomistic and materialistic character of the Epicurean system of thought is reflected most clearly in its political doctrines. As the universe, according to this philosophy, developed from the accidental collision of atoms¹ so human society originated from an accidental aggregation of indi-

¹"Nullo cogente natura, sed concursu quodam fortuito." Cicero, *De natura deorum*, I. 66.

viduals actuated by selfish or utilitarian motives. States owe their origin to a conscious agreement or contract among individuals for the purpose of mutual advantage and self preservation. Previous to this contract no law existed for there is no absolute and independent law outside of that created by contract. While the stoics teach "naturalem legem divinum esse, eamque vim obtinere recta imperantem, prohibentemque contraria,"² Epicurus defines the natural law as follows: "justum natura est utilitatis pactum ut neque invicem laedamus nos nec laedamur."³

In accordance with these views the Epicurean ideas concerning the primitive state of the human race differ essentially from those of the stoics. There never existed a golden age such as the latter and the popular traditions claim but, on the contrary, at the beginning there were only necessity, poverty, ignorance and coarseness as Lucretius tells us in his poem "*De rerum natura*." The history of the human race according to him is the history of its gradual rise to a material, moral and intellectual civilization.

It is not difficult to recognize in these views the source of political theories which we meet again in the seventeenth and eighteenth centuries and of which Gassendi, Spinoza and especially Hobbes and Rousseau are the chief exponents. Before the radical rationalism and the materialism of the Epicurean philosophy of the state was to be revived, however, the political and social theories of stoicism had already attained a paramount influence as an historical factor. The acceptance by the early Church of the *jus naturale* as developed by the stoics and its fusion with essential tenets of Christianity constitutes, in fact, an event of the utmost importance. Christ's message of the kingdom of God, a message of extreme religious individualism and at the same time of universality, contained no definite precepts with regard to the possible social and political structure of the ideal community governed by the spirit of divine love which gradually was to be realized on earth. However, with the formation of the early Christian

² Cicero, *De natura deorum*, I, 14.

³ M. Voigt, *Das jus naturale*, etc. I, 131.

congregations in which Christ's ideal found expression in a radical religious individualism and socialism, a decided antagonism to the existing social and political organizations developed, followed by long struggles with the Roman state. Although these struggles finally ended in the victory of the Church, i.e., in the nominal Christianization of the state, the inherent contrast between the Christian ideal and the traditional non-Christian institutions of society as well as the exigencies of actual life had not been removed. To bridge it over a compromise which would make allowance for these exigencies and established institutions and at the same time preserve the spirit of strict Christianity seemed necessary. This was accomplished by the adoption and the gradual transformation of the *jus naturale* as developed by the stoics which, moreover, bore strong resemblance to certain Christian views and doctrines.

It is impossible here to trace the history of the new Christian conception of the *lex naturae* resulting from the fusion of stoic and Christian ideals which was to play a remarkable role not only in the medieval Church but also in the teachings of Luther and Calvin. Emphasis should be laid upon the fact, however, that while the Church identified the *lex naturae* on the whole with the *lex Mosis*, certain mediaeval sects and later certain protestant denominations, especially the latter, insisted upon the identity of the *jus naturale* as it existed in the *status integritatis* before the fall with the divine law proclaimed by Christ in the sermon on the mount. Freedom, equality, community of property and equal rights of man and woman constitute the original *jus naturale* and demand realization in order to bring about the millenium. The element of political ferment in this conception of the *jus naturale* is obvious, and it is here that modern democracy derives its real origin. The powerful plea for liberty of conscience and religious freedom first uttered by Luther and contained in the Anabaptistic creed as well as in the teachings of mystics such as Valentin Weigel and Jacob Boehme who, moreover, identified the inner light with human reason and the law of nature, worked like a leaven in Germany, in Holland and finally in England, where

during the revolution, their political consequences became apparent.⁴

Although a direct influence of the lofty ideas of religious tolerance upon the rise of the modern, purely rationalistic doctrine of the *jus naturale* cannot be shown, it does not seem to be merely accidental that the latter developed contemporaneously with the claims of religious liberty. It is in times of social unrest and revolutionary convulsions that the law of nature is evoked, and as the violent struggles to attain religious freedom affected the whole of the social body, the attempt at a reconstruction of the *jus naturale* does not seem surprising. That the basis of this reconstruction was found in human reason may be explained from various causes.

The emphasis which the mystic and sectarian circles laid upon the identity of the inner light with human reason and the law of nature has already been pointed out. The emancipation of human reason which lay hidden in this view and, in fact, inaugurated the era of rationalism and "enlightenment" made the revival of stoic doctrines in which, as we have seen, reason played a similar rôle all the more acceptable and plausible. Moreover, it will be remembered that the humanistic movement carried with it not only a new conception and valuation of man and his innate powers, but also a deeper and more intense study of ancient literature and philosophy. This led, of course, also to a renewed interest in the study of Roman law and the conscious attempts of its revival such as we notice among a number of distinguished French jurists during the 16th century.

The greatest impulse of the development of the modern doctrine of the *jus naturale* was given, however, by the social and political conditions of the time. While the sway of the medieval Church and the Empire had practically been broken by the Reformation, the autocratic power of the territorial sovereigns, on the other hand, was constantly increasing, and

⁴ See Valentin Weigel, *Kirchen oder Hauspostill* (1618) II, 184: "Es ist das angeborne Licht in einem Jeden, daraus alle Erkenntniss fleusset." E. D. Colberg, *Das Platonisch-hermetische Christentum* (1710) II, 338: "Gott hat in alle Menschen, auch Jüden und Heyden einen innerlichen lebendigen Glauben gepflanzt, darin offenbaret er sich allen Völkern durch das Gesetz der Natur in der Liebe, die auch Gott selber ist."

with it the antagonism of the state to the rising individualism, nourished by the religious movements and the changed economic and social conditions of the period. As both, the sacerdotium and the imperium, had ceased to be the universal arbiters, a new tribunal was to be found before which the fierce contest between religious freedom and coercion, between democracy and autocratic rule could be decided. It is for this reason that the *jus naturale* of antiquity was evoked which showed the possibility of reconstructing upon the basis of individualistic principles, both society and state by going back to their very origins. How widespread and deep the desire for social and political reconstruction was is evinced, furthermore, by the numerous utopias produced during the sixteenth and seventeenth centuries, all of which show traces of the stoic ideal of the golden age.

It is, of course, impossible here even to sketch the various theories of natural right as they were developed by such men as Althusius, Hugo Grotius, Pufendorf and others in Holland and Germany, and by Hooker, Hobbes, Locke and their followers in England. That the doctrine of the law of nature should have found its earliest and most ardent champions in these countries seems due in no small measure to the ineradicable love of freedom of which the early Germanic political institutions, as described by Tacitus, give ample evidence. In fact it was the Tacitean picture of old Germanic liberty expressed in the sovereignty of the people, that inspired German poets and patriots in their struggles for political freedom from the sixteenth century down to the wars of liberation.

It is significant, therefore, that the first attempt to construct the state according to the principles of the revived stoic conception of natural law was made by Johannes Althusius upon the basis of the theory of the sovereignty of the people. A professor at the German university of Herborn, which stood in most intimate religious and intellectual relationship to the Netherlands, Althusius, in the preface to his famous book, "*Politica methodice digesta et exemplis sacris et profanis illustrata*," points out in eloquent terms that there was no more glorious an example of the just, wise and strong realization of the sovereignty of the people, the central thought of

his book, than the example which the united Dutch provinces had given to all nations by freeing themselves from Spain. The close connection between the great historical event which inspired Althusius and the origin of his political theories is all the more important since the sovereignty of the people together with his doctrine of the social contract (*contractus socialis*) from now on occupy the foremost place in the constantly increasing discussions of natural law, discussions which finally, as a matter of logical consequence as well as of immediate and pressing practical concern, develop the doctrine of the original rights of the individual. While there is no question that the demand for religious freedom furnished the first impulse to the development of this doctrine, it would be a mistake to trace the declaration of the rights of man directly to religious causes. Religious toleration in the strict sense of the word is, in the last analysis, incompatible with the idea of orthodoxy to which every religious body must adhere as a matter of principle. The demand for religious liberty, therefore, means, within the various sects, in reality the demand for the right of exercising some particular religion and not the recognition of the fact that other religious bodies should have the same right. Tolerance, in the latter sense, is the result of lofty philosophical thought, as is found first in mystics such as Valentin Weigel and Jacob Boehme and later emphasized chiefly by philosophers such as Spinoza, Locke and Thomasius. It is for this reason that religious liberty is listed comparatively late among the rights of man proclaimed by the *jus naturale*. Least of all, however, is there any justification for the claim that religious liberty was one of the prime factors which produced the declaration of human rights by the various American colonies.⁵

⁵The attitude of the New England theocracy toward religious liberty and toleration is well illustrated by the following quotations:

Nathaniel Ward (1645): "God doth nowhere in His word tolerate Christian States to give toleration to adversaries."

"Polypietty is the greatest impiety in the world."

John Cotton: "It was Toleration that made the world anti-Christian."

Pres. Oakes (1673): "I look upon Toleration as the first-born of all abominations."

There is, in fact, in the various American bills and declarations of rights not a single right which previously had not been evolved theoretically by the leading advocates of the *jus naturale*. Liberty and equality, they had argued, are not the only rights postulated by natural law, but there are others which are retained by man when by an act of free will he enters into the social compact. Too much emphasis cannot be laid upon the principle of the free will of the individual entering upon this compact, a principle which was first introduced by Althusius, for upon it is based not only the conception of the purpose of the state, which is the common good or welfare, but also the theory of the inalienable rights of man. In conformity with the stoic tradition both Grotius and Pufendorf teach that according to the law of nature all men in their original state are free and equal. Following Pufendorf, who saw in self-preservation a fundamental instinct of man, Locke makes the preservation of property the central idea of his political system, an idea which, in his opinion, includes also the life and liberty of the individual. This utilitaristic emphasis upon property was due in all probability to the desire of curbing the communistic tendencies of certain religious sects and of securing for the English middle classes the necessary protection of their liberty and property against possible future government encroachment such as they had experienced under the rule of the Stuarts. That Locke's theories, on the whole a revival of the political doctrines of stoicism and their outspoken individualism, would appeal strongly to the American colonists in their economic struggle against the encroachments of the British government goes without saying.

It is doubtful, however, whether Locke's conception and interpretation of the rights founded in the law of nature would as such have lead to the declaration of the rights of man and to the establishment of a new government since Locke, after all, considers the English government as a moderate monarchy and an especially happy embodiment of the constitutional form of the *jus naturale*. He even goes so far as to defend prerogatives and to speak of the "God-like English princes" in a way that smacks strongly of the divine right. If the English form of government had really been the model

state, in which the rights of man were secured, the American colonies would have had little reason to break away from it.

What Locke's system of the *jus naturale* was lacking in particular and what must have seemed of vital importance to the discontented American colonists, was the assertion of the inalienability of freedom. While one or two sections of his "Two Treatises on Government" (II, 23, 95) seem to imply this assertion, there are other passages which state distinctly that "men when they enter society, give up the equality, liberty and executive power that they had in the state of nature into the hands of the society to be so far disposed of by the legislative as the good of the society shall require." (131) The only power which nobody can transfer to another is the power over his own life. Whether the failure of Locke and his immediate followers, Montesquieu and Rousseau, to recognize the inalienableness of freedom was due to the illusion that the democratic form of government as such insured the personal freedom of the individual, an illusion which disregards the tyranny of majority rule, or whether it was caused by Locke's secret reverence for the hereditary prerogatives of the British crown, cannot be decided here.

The champions of the cause of the colonies, all assiduous students of the law of nature, which furnished them with their weapons, had to look elsewhere for the justification of severing their allegiance to a government which, though claiming to be founded on the laws of nature, did not recognize in its laws the rights of the individuals and denied them the fundamental rights of this law. They found this justification in the basic principle of the *jus naturale* laid down for the first time in the system of Chr. Wolff, according to which the right of freedom is *inalienable*. Wolff arrives at this important principle by distinguishing strictly between freedom in the original state of nature and freedom in the state of society, and defines the former as *jus connatum* and as such "*homini ita inhaeret, ut ipsi auferri non possit.*"⁶ This innate and inherent freedom is not given up by man to the majority of the community, as Locke and others teach, but is only restrained: "*Imperium civile cum metiendum sit ex fine civitatis, idem non extenditur*

⁶ Chr. Wolff: *Institutiones juris naturae et gentium* (1750), § 74.

ultra eas civium actiones quae ad bonum publicum consequendum pertinet; consequenter cum nonnisi quoad easdem libertas naturalis singulorum restringatur, quoad ceteras actiones ea illibata manet.”⁷

The extraordinary esteem in which Samuel Pufendorf's great work “*De jure naturae et gentium*” (1673) stood at the end of the seventeenth and the beginning of the eighteenth centuries in Europe and America⁸ was second only to the regard in which Christian Wolff's rigorously systematic and philosophical book, “*Institutiones juris naturae et gentium*,” was held since the middle of the eighteenth century. “The academies of Paris and London,” says Hettner, “made Wolff their honorary member, and it was indeed an hitherto almost unheard of event that the scientific writings of a German were translated into nearly all living languages.” Especially strong was his influence in France where Voltaire became an enthusiastic student of his philosophy, and the *Journal des Savants*, the *Histoire littéraire* and the *Journal de Trévoux* published large extracts from his writings.

How soon Wolff's work on the *jus naturale* became known in America cannot be definitely stated, but the fact that Vattel's book on the Law of Nature, a famous popularization of Wolff's system, is often quoted by John Adams, Samuel Adams, Otis, Jefferson, Hamilton, and others, goes to show that Wolff's ideas had taken root in this country even before his work was translated into French by E. Luzac in 1772.

There seems to be no question that as soon as in the political discussions the rights of man are described as inherent and inalienable, as is done by James Otis in his celebrated speech on the writs of assistance delivered in Boston in 1761, the influence of Wolff is evident. Moreover, the fact that in the same speech Otis mentions the rights of mutual defense and security, proves beyond a doubt that he knew Wolff's list of *jura connata*, a catalogue existing in no previous author: “Ex

⁷ *Ibid.*, § 980.

⁸ The most striking example of the influence which Pufendorf, who held the first professorship of International Law at the University of Heidelberg, exerted upon early American political thought is the famous little book, *A Vindication of the Government of New England*, published in 1717 by John Wise, pastor at Ipswich, Mass.

hactenus dictis patet, quaenam sint jura hominum connata, nimirum jus ad ea, sine quibus obligationi naturali satisfieri nequit, sub quo comprehenditur jus petendi officia humanitatis, et alterum sibi obligandi ad ea perfecte, aequalitas, libertas, *jus securitatis* et inde natum *jus defensionis* et jus puniendi."⁹ It is no wonder that John Adams shuddered, as he relates, to hear these doctrines whose import was so far reaching, and that he considered American independence to have been born then and there.

It is a most significant fact, hitherto overlooked, that Wolff's *Institutiones Juris Naturae*, in Luzac's edition of 1772, which prints the Latin text opposite the French translation, was owned by Jefferson and shows a mark, presumably made by him, opposite the Latin paragraph which treats of the right of civil war: "differt a rebellione Bellum civile quo justa arma adversus *Rectorem civitatis* sumunt subditi. Licitum igitur est in omni casu, in quo Rectori civitatis resistere licet."¹⁰ In the last part of the work numerous passages which treat of war and neutrality are marked by Jefferson. While it is impossible to determine the exact year when he purchased the book his manuscript library catalogue shows that he possessed it previous to March 6, 1783.

In view of these facts it is of great interest to examine the Declaration of Independence with regard to the possible influence which Wolff's teachings might have had on Jefferson. That the conception of the inalienable rights, especially of the inalienability of the right of freedom, must be traced back to Wolff has already been pointed out. Of the three rights listed by Locke: life, liberty and property, the Declaration of Independence has only life and liberty, adding in place of property the pursuit of happiness. While the latter is not contained in Wolff's catalogue of rights, it appears among the objects for which, according to Wolff, the State has been constituted: "unde patet, pacto hominum civitates fuisse constituendas et finem civitatis consistere in vitae sufficientia, abundantia eorum ad vitae necessitatem commoditatem et jucunditatem requiruntur ac mediorum felicitatis."¹¹ The omission of the right of property is all the more significant, since Locke, as has been shown above, based the entire structure of his system upon this conception. Whether Jefferson, with keen logical insight,

⁹ *Ibid.*, § 95.

¹⁰ *Ibid.*, § 1233.

¹¹ *Ibid.*, § 972.

considered the inalienability of property as debatable and irrelevant as far as the great issue was concerned, or whether he thought that the Declaration of Independence should be based upon an interpretation of the law of nature different in some essentials from that of Locke and his follower, Blackstone, both of whom were after all loyal Englishmen, is difficult to determine.

To justify the complete political separation from England and the establishment of a new form of government, an exposition of the right of resistance that could furnish the legal basis for these actions was necessary. What Locke had to offer as a last resort in this respect was an appeal to Heaven. Wolff, however, was far more explicit and radical in his teachings. While he concedes to the individual only the right of passive resistance against encroachments on his liberty, he declares that the people as a whole, by whose consent the government exists, are entitled to disobey and give active resistance whenever their constitutional rights are infringed, for with the breach of the social compact the people return to the original state of nature in which each individual protects his own rights and the formation of a new government becomes imperative.

That this train of reasoning is also at the bottom of Jefferson's arguments in support of the contention that "it is the right and the duty of the people to throw off a government designing to reduce them under absolute despotism and to provide new guards for their future security" is quite evident. Nor can the purpose of laying the long list of infractions of the rights of the colonies directly at the door of the British king, the Rector civitatis,¹² and not of the English Parliament which, of course, was equally guilty of these infringements, be misunder-

¹² The original draft of the Declaration of Independence reads, "the present majesty," which Benjamin Franklin changed into "the present King of Great Britain."

As a matter of historical interest it may be mentioned that among "the injuries and usurpations" with which the King of Great Britain is charged there appears in Jefferson's original draft also the following: "he is at this time transporting large armies of *Scotch and other foreign mercenaries* to compleat the works of death," etc. Why the *Scotch*, who were evidently classed as foreigners with the so-called "Hessians" by Jefferson, were afterwards omitted has not yet been explained.

stood. Had Jefferson adhered to the fiction of the democracy of the British government and accused the Parliament, his entire argumentation would have collapsed and what he wished to have considered an uprising against tyranny, justifiable by the law of nature, would have appeared an unwarrantable rebellion.

There is finally one more vital point of contact between Jefferson's Declaration and the system of Wolff. Although Locke had succeeded in reestablishing the *jus naturale* of stoicism, his own system lacked the metaphysical foundation which the stoic doctrine possessed in the principle of the universal reason, of which the *jus naturale* is a manifestation. Without sacrificing the rationalistic character of his method or of returning to the theological explanation of the natural law of previous times, Wolff, following Leibniz, on the other hand, declared that "*autor legis naturae ipse Deus est et ad actiones suas eidem confirmandas hominem obligat, sicque obligatio naturalis etiam divina est et lex naturalis divina.*"¹³ The spirit of Deism which dictated this explanation of the origin of the law of nature would naturally appeal to Jefferson and it is not difficult to see how it is reflected in the phrase: "that they are *endowed* by their *creator* with certain inalienable rights."¹⁴ The *jus connatum* is, therefore, in the last analysis a divine law and its inalienability follows from its divine character.

By this allusion to the divine origin of the law of nature the doctrine of the inalienable rights of man became a message whose inspiring ring acted with irresistible force especially upon the masses. What had been slowly evolved in the quiet workshop of the thinkers and teachers now loomed in historical reality by the establishment of a democracy such as the world had not seen before.

The student who follows the history of natural law from its beginnings among the stoics to its consummation in the declaration of the rights of man, is impressed with the fact that he is face to face with one of the most potent forces at the

¹³ Wolff, *Institutiones*, § 41.

¹⁴ It is most significant that in the original draft of the Declaration of Independence, Jefferson intended to deduct the inalienable rights from the equality of all men: "that from that equal creation they derive in rights inherent and inalienable."

root of the historical process since the decline of antiquity. Determined in its growth by great political and social events, the doctrine of natural law not only accompanies these events but also in many instances furnishes and spreads the ideas which shape them. Its main efforts are directed toward a transformation of existing social and political conditions and toward the establishment of a new and more desirable state of human affairs in the future.

The real motive power behind this progressive tendency, however, was the exalted conception of nature as the original source of truth, goodness and right and, above all, the ideal of man and humanity which had been carefully fostered by thinkers and poets ever since the time of the Renaissance, an ideal which, moreover, acquired a new lustre with the discovery of the inalienability of the rights of man.¹⁵

The victory of man's rights in the political sphere was therefore felt essentially as a triumph of humanity. For this reason Klopstock, the apostle of humanity, hails the American revolution with the lines:

Ein hoher Genius der *Menschlichkeit*
Begeistert dich!
Du bist die Morgenröte
Eines nahenden grossen Tages.¹⁶

In a later ode entitled, "Der Freiheitskrieg," he greets the French Revolution, before its pledges and promises had been broken, in a similar strain:

Weise *Menschlichkeit* hat den *Verein* zu Staaten erschaffen,
*Hat zum Leben das Leben gemacht.*¹⁷

¹⁵ An excellent illustration of the high conception of nature which inspired the advocates of natural law is furnished by the following extract from Wolff's dedication of his *Institutiones*: "Actionum humanarum bonitatem, aequitatem et rectitudinem non facit hominum opinio, quae stabilis non permanet, nec sibi in omnibus consentit, sed ut sint bonae, ut rectae, id ab ipsa hominum natura venit, et in rerum essentia atque natura rationem sufficientem habet. Differt igitur ab opinione veritas, quae aeternitatem et sempiternitatem ab ipsa hominum atque rerum essentia et natura immutabili trahit . . . Haec ratio me permovet, ut castum illud et sanctum jus, quod ipsa natura inter homines singulos atque gentes constituit, inconcussum felicitatis totius generis humani fundamendum, et ipsa natura humana continuo nexu . . . redigerem," etc.

¹⁶ *Der jetzige Krieg* (1781).

¹⁷ *Der Freiheitskrieg* (April, 1792).

There is no question that Goethe, as has already been stated, while a student of law at Leipzig and Strassburg, became intimately acquainted with Wolff's system of natural law and his doctrine of the *jus connatum*. How deeply this doctrine impressed him can be seen from the fact that years before the innate and inherent rights became the political watchword in America and France, he made the idea of congenital origin his own to express the birthright of genius and personality. Hence the epithet "mitgeboren," a direct translation of *connatum*, which he employs to characterize the endowments which nature has given man. Thus he speaks of the innate grace of true womanhood as "mitgeborner Anstand" and calls his own destiny "fatum congenitum." A striking example of the use he makes of Wolff's conception of "*connatum*" occurs, moreover, in the dramatic fragment, "Prometheus," of the year 1773 in which the young poet draws a remarkable picture of the *communio primaeva*, as Wolff and others before him call the state of nature in which men lived before positive laws were established. The similarity between this picture and Wolff's description of the original state of man, which is essentially that of the stoics, precludes the suggested influence of Rousseau's "Discours sur l'inégalité" (1758), a work based wholly upon Epicurean theories of the *status originarius*.¹⁸ It is characteristic of Goethe's early attitude of indifference toward political questions that his sketch of the primitive state of man suggests the origin of the right of property but in no way alludes to the beginning of government. What at the time interested the poet chiefly was the modern ideal of man as a free and self-responsible being, personified in Prometheus, who defiantly proclaims for himself and the generation created by him, the right of shaking off the yoke of servitude which the gods had placed upon him. His former religious faith has yielded to an unlimited self-confidence that recognizes neither divine origin nor dependency upon the gods. Even the inspirations of the goddess of wisdom, his only friend among the Olympian powers, he declares to be "mitgeborne Harmonien" to which he alone has a right.

¹⁸ See F. Saran, Goethe's Mohamet und Prometheus, Halle, 1914.

The intimate relationship existing between the rebellious spirit of the Prometheus fragment and the insurgent temper of the subsequent revolutionary movements was recognized by Goethe himself when, in later years, he called his Prometheus the "gospel for our revolutionary youth" and "the priming of an explosion."

It was at the time when the firsts bursts of thunder announced the approach of the storm of insurrection against tyrannical oppression that Goethe wrote the famous lines in defense of the *jus connatum* quoted at the beginning of this paper, summing up in a single epigrammatic phrase the fundamental issue of the great revolutionary struggle. How deeply Goethe was affected by the enthusiastic hopes which the declaration of human rights in America and afterwards in France had aroused in Germany may be seen from the well known passage in "Hermann and Dorothea":

Denn wer leugnet es wol, dass hoch sich das Herz ihm erhoben,
Ihm die freiere Brust mit reineren Pulsen schlug,
Als sich der erste Glanz der neuen Sonne erhob,
Als man hörte vom *Rechte der Menschen*, dass allen gemein sei,
Von der begeisterten *Freiheit* und von der löblichen *Gleichheit*!
Damals hoffte jeder, sich selbst zu leben, es schien sich
Aufzulösen das Band, das viele Länder umstrickte,
Das der Müßiggang und der Eigennutz in der Hand hielt.

.
O, wie froh ist die Zeit, wenn mit der Braut sich der Bräutigam
Schwinget im Tanze, den Tag der gewünschten Verbindung erwartend!
Aber herrlicher war die Zeit in der uns *das Höchste*,
Was der Mensch sich denkt, als nah und erreichbar sich zeigte.
Da war jedem die Zunge gelöst, er sprachen die Greise,
Männer und Jünglinge laut voll hohen Sinns and Gefühles.

Unfortunately this glorious time did not last long and the disillusionment which the subsequent events in France brought to Klopstock and other noble spirits of this period, also seized Goethe. Hence he continues in "Hermann und Dorothea":

Aber der Himmel trübte sich bald. Um den Vorteil der Herrschaft
Stritt ein verderbtes Geschlecht, unwürdig, das Gute zu schaffen.
Sie ermordeten sich und unterdrückten die neuen
Nachbarn und Brüder.

Nevertheless Goethe did not abandon his faith in the message of the rights of man, and for his defense of his mission as a poet

expressed in the famous lines of *Faust*, I. 135 ff., he knows of no higher appeal than that of his sacred human right.

There has been a tendency both in Europe and in America during the last decades to disregard and to disparage the law of nature upon which the declaration of our independence rests. But no tyranny, whether of autocracy or pseudo-democratic majority rule, will succeed in smothering its immortal spirit,¹⁹ nor will any philosophic or religious doctrine destroy the innate belief of man that he carries the oracle of divine nature in the secret recesses of his soul. Here originate our conceptions of truth and right and here is born the will to avenge nature when it has been desecrated and outraged by man. Whenever the old order of things must be demolished to inaugurate a new day for humanity, the law of nature will again be conjured and the poet's immortal words will come true:

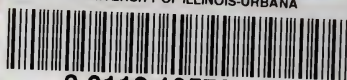
Wenn der Gedrückte nirgends Recht kann finden,
 Wenn unerträglich wird die Last—greift er
 Hinauf getrosten Mutes in den Himmel
 Und holt herunter seine ewigen Rechte,
 Die droben hangen unveräusserlich
 Und unzerbrechlich, wie die Sterne selbst—
 Der alte Urstand der Natur kehrt wieder,
 Wo Mensch dem Menschen gegenüber steht—
 Zum letzten Mittel, wenn kein andres mehr
 Verfangen will, ist ihm das Schwert gegeben.

JULIUS GOEBEL.

¹⁹ Cf. Jefferson's opinion expressed in a letter to James Madison (1787): "I hold it that a little rebellion now and then is a good thing and as necessary in the political world as storms in the physical. Unsuccessful rebellions indeed establish the encroachments on the right of people which have produced them." . . . Again in another letter of the same year he says: "God forbid we should ever be twenty years without such a rebellion [as *Shay's*] . . . If they [the people] remain quiet . . . it is a lethargy, the forerunner of death to the public liberty. . . . What country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance."



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